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5 UNITED STATES DISTRICT COURT
6 WESTERN DISTRICT OF WASHINGTON
7 AT SEATTLE

8 ROBERTA PICU and SEVER PICU,

9 Plaintiffs,

10 v.

11 MARIANNA BOT, *et al.*,

12 Defendants.

No. C14-0330RSL

ORDER DENYING PLAINTIFFS'
MOTION FOR LEAVE TO FILE
SUR-REPLY AND MOTION TO
STRIKE

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14 This matter comes before the Court on plaintiffs' "Motion for Relief from Deadline"
15 (Dkt. # 93) and "Motion to Strike 29 C.F.R. § 785.23 as a Defense" (Dkt. # 94). The Court was
16 able to evaluate and resolve the issues raised in defendants' motions for summary judgment
17 without additional briefing. Plaintiffs' request for an extension of the deadline in which to file a
18 sur-reply is therefore DENIED.

19 With regards to plaintiffs' request that the § 785.23 "defense" be stricken, they have not
20 shown that the resident employee provision is an affirmative defense to a Fair Labor Standards
21 Act claim. That section provides a methodology for calculating compensable hours when an
22 employee resides at an employer's premises and the parties agree to utilize a reasonable
23 approximation of the hours worked rather than attempting to track each compensable task. In
24 this case, plaintiffs claim that they are entitled to wages pursuant to a contract of the type
25 described in § 785.23. The section provides the standards by which the contract will be

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1 evaluated: it is not a defense to or avoidance of the claim. Nor have plaintiffs shown that they
2 served a discovery request that would have required defendants to disclose a legal argument they
3 were planning to raise in a summary judgment motion.

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5 For all of the forgoing reasons, plaintiffs' motions (Dkt. # 93 and Dkt. # 94) are
6 DENIED.

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8 Dated this 14th day of December, 2015.

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11 Robert S. Lasnik
12 United States District Judge
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